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March 15, 2002

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OFFICE OF THE
EXECUTIVE SECRETARY

David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *Docket to Determine the Compliance of BellSouth Telecommunications Inc.'s Operations Support Systems with State and Federal Regulations*
Docket No: 01-00362

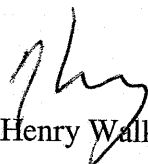
Dear David:

Enclosed are the original and thirteen copies of the *Findings of Fact and Conclusions of Law* filed on behalf of AT&T Communications of the South Central States, Inc., TCG MidSouth, Inc. (collectively "AT&T"), the Southeastern Competitive Carriers Association, and MCI WorldCom Communications, Inc. in the above-referenced proceeding.

Copies have been forwarded to parties of record.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 
Henry Walker

HW/nl
Attachment

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In re:)
Docket to Determine the Compliance)
of BellSouth Telecommunications, Inc.'s)
Operations Support Systems with State)
and Federal Regulations)

Docket No.: 01-00362

**PHASE I PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
OF AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, L.L.C.
TCG MIDSOUTH, INC., THE SOUTHEASTERN COMPETITIVE CARRIERS
ASSOCIATION, AND MCI WORLDCOM COMMUNICATIONS, INC.**

AT&T Communications of the South Central States, L.L.C., TCG MidSouth, Inc. ("collectively AT&T"), the Southeastern Competitive Carriers Association ("SECCA"), and MCI Worldcom Communications, Inc. (collectively the "Intervenors") hereby submit Proposed Findings of Fact and Conclusions of Law in the above-captioned proceeding.

DETAILED PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE NO. 1

What test should the Authority apply to determine whether out-of-state performance data can be an appropriate surrogate for Tennessee-specific data?

POSITIONS OF THE PARTIES

Intervenors: The Authority must evaluate the extent to which BellSouth's OSS (a) are physically indistinguishable region-wide; and (b) produce substantially the same performance results from state-to-state. If BellSouth cannot establish with a reasonable degree of certainty that its OSS are physically indistinguishable and produce substantially the same performance results from one state to another, the Authority should not consider out-of-state performance data as an appropriate surrogate for Tennessee-specific data in its evaluation of BellSouth's compliance with state and federal law.

BellSouth: In order to demonstrate “regionality,” BellSouth must show that its OSS were designed to use similar hardware, software, and processes from state-to-state.¹ Comparative performance data is irrelevant to a regionality determination.²

FINDINGS OF FACT

1. As explained below in detail under Issue No. 4, the Authority finds that BellSouth's OSS performance can and does vary substantially from state-to-state. BellSouth itself concedes that “differences in performance can and do exist” across the BellSouth region and these performance differences can be substantial.³

CONCLUSIONS OF LAW

2. The Tennessee Regulatory Authority (“Authority”) convened Docket No. 01-00362 on February 21, 2001 in order to “determine whether existing data or test results derived from [Operational Support Systems (“OSS”)] testing in other states is reliable and applicable to Tennessee and, in those instances where reliance on such testing is inappropriate, to conduct necessary testing.”⁴ The Authority subsequently bifurcated the docket into two separate phases. Phase I addresses the relevancy or “applicability” of out-of-state performance data to BellSouth's current wholesale OSS in Tennessee. Phase II will address the reliability of out-of-state performance data deemed relevant by the Authority. Ultimately, this docket should provide the Authority with the means by which

¹ BellSouth's Phase I Post-Hearing Brief at 2.

² *Id.* at 25-26.

³ Heartley Direct at 4; Tr. 12/6/01 at 59.

⁴ Order Approving First Report and Recommendation of the Pre-hearing Officer, In re Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s Operations Support Systems with State and Federal Regulations, TRA Docket No. 01-00362 (July 27, 2001) at 2-3.

it can collect the information it needs to conduct an exhaustive and rigorous review of whether CLECs "operating in Tennessee have nondiscriminatory access to BellSouth's Operations Support Systems (OSS) as required by state and federal law."⁵

3. The Authority concludes that it has broad discretion to determine the relevancy of out-of-state performance data to its investigation of whether BellSouth's OSS complies with state and federal law. In the federal arena, the FCC has stated that it "will look to the state to resolve factual disputes wherever possible. Indeed, we view the state's and the Department of Justice's role to be one similar to that of an 'expert witness.'"⁶ The FCC also has stated that "where the state has conducted an exhaustive and rigorous investigation into the BOC's compliance with the checklist, we may give evidence submitted by the state substantial weight in making our decision."⁷ The Authority, therefore, must exercise its expert judgment in conducting an exhaustive and rigorous investigation aimed at resolving disputed issues, such as the "regionality" of BellSouth's OSS.
4. The Authority concludes that it must evaluate the extent to which BellSouth's OSS (a) are physically indistinguishable regionwide; and (b) perform substantially the same from state-to-state. BellSouth, therefore, must establish that its OSS are substantially the same

⁵ *Id.*

⁶ Memorandum Opinion and Order, *In the Matter of Application by Bell Atlantic New York for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd. 3953 ¶ 51 (F.C.C. Dec. 22, 1999) (No. CC 99-295, FCC 99-404) ("Bell Atlantic New York Order").

⁷ *Id.*; see also Memorandum Opinion and Order, *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, 16 FCC Rcd. 6237 ¶ 10 (F.C.C. Jan. 22, 2001) (No. CC 01-29, FCC 00-217) ("SWBT Kansas/Oklahoma Order").

from both a physical and performance perspective. If BellSouth cannot make that showing, then the Authority cannot conclude with any reasonable degree of certainty that the out-of-state performance data accurately reflects BellSouth's actual OSS performance in Tennessee. Absent such certainty, the Authority must conclude that it would be inappropriate to use out-of-state performance data as a surrogate for Tennessee-specific data to evaluate BellSouth's compliance with state and federal law.

5. The Authority concludes that its test is consistent with the FCC's *Kansas/Oklahoma Order*, in which the FCC evaluated the "regionality" of SWBT's OSS. The FCC's evaluation was based on the premise that similar OSS systems and processes will result in similar performance.⁸ However, if objective performance data shows that OSS systems and processes produce different results from state-to-state, then either: (a) the premise is incorrect in that instance; or (b) the OSS systems and processes are not sufficiently similar. In either case, comparative performance data is highly relevant and probative to the issue of OSS regionality. Indeed, the FCC noted in its *Kansas/Oklahoma Order* that "evidence suggesting that billing systems function differently in different states, or competing carriers' assertions that they receive different treatment in different states" could undermine an RBOC's regionality claim.⁹ The FCC, moreover, explained that "evidence of satisfactory performance in another state cannot trump convincing evidence

⁸ *SWBT Kansas/Oklahoma Order* ¶ 113 ("In the end, we find that it is reasonable to conclude that the existence of these similarities will result in similar performance."), ¶ 111 ("Where SWBT has discernibly separate OSS, SWBT demonstrates that its OSS reasonably can be expected to behave the same way in all three states.").

⁹ *SWBT Kansas/Oklahoma Order* ¶ 164 n.472.

that an applicant fails to provide nondiscriminatory access to a network element in the applicant state."¹⁰

6. The Authority rejects BellSouth's argument that, under the FCC's Kansas/Oklahoma Order, comparative performance data is irrelevant to evaluating OSS regionality. Nothing in that order or any other FCC order suggests that the fact-finder (be it the FCC or the Authority) assessing regionality should ignore evidence that BellSouth's actual OSS performance can and does vary substantially from state-to-state, which is the factual scenario facing the Authority in this case. The FCC's practice is to "look at each application on a case-by-case basis and consider the totality of the circumstances, including the origin and quality of information" before it.¹¹ In its Kansas/Oklahoma Order, the FCC described "what types of [regionality] evidence [it] found persuasive in this instance."¹² The FCC, however, warned that it was not "establish[ing] an exact script for future applicants to follow."¹³
7. The Authority also concludes that BellSouth's circumstances here in Tennessee are materially different in at least four important respects than the circumstances facing SWBT in Kansas and Oklahoma. First and foremost, compelling evidence exists that indicates BellSouth's OSS performance varies substantially throughout its region, whereas no such evidence appears to have been brought forward regarding SWBT's OSS

¹⁰ *SWBT Kansas/Oklahoma Order* ¶ 36.

¹¹ *SWBT Kansas/Oklahoma Order* ¶ 29.

¹² *SWBT Kansas/Oklahoma Order* ¶ 110 (emphasis added).

¹³ *SWBT Kansas/Oklahoma Order* ¶ 112.

performance in its region. Second, unlike SWBT, the FCC has not approved any BellSouth Section 271 applications in other states.¹⁴ Third, BellSouth claims that its volume of commercial orders in Tennessee are substantial enough to stand on their own,¹⁵ whereas the FCC looked to out-of-state performance data only in those instances "where low volumes render SWBT's performance data in Kansas and Oklahoma inconsistent and inconclusive."¹⁶ Finally, BellSouth is urging the Authority to rely on the results of the Georgia third-party test (but not the Florida test), whereas in Kansas and Oklahoma, SWBT apparently did not urge the FCC to rely on the Texas third-party test, which the FCC had previously found to be limited in scope and depth.¹⁷

ISSUE NO. 2

Are BellSouth's OSS physically indistinguishable regionwide?

POSITIONS OF THE PARTIES

Intervenors: Evidence indicates that BellSouth's OSS are not physically uniform throughout its region. Critical aspects of BellSouth's OSS differ physically from state-to-state, especially in the functional areas that rely on BellSouth's legacy systems and manual processes. BellSouth, moreover, failed to demonstrate that such physical differences do not have a material impact on performance.

¹⁴ See *SWBT Kansas/Oklahoma Order* ¶ 2.

¹⁵ Tr. 12/4/01 at 155.

¹⁶ *SWBT Kansas/Oklahoma Order* ¶ 108.

¹⁷ See Memorandum Opinion and Order, *In the Matter of Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a/ Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd. 18,354 ¶ 103 (F.C.C. June 30, 2000) (No. CC 00-65, FCC 00-238) ("SWBT Texas Order").

BellSouth: BellSouth's OSS "are designed, developed, modified, and measured for performance on a regionwide basis to operate in an indistinguishable manner whether the CLEC is in Tennessee, Georgia, or any of the other seven states in the region."¹⁸

FINDINGS OF FACT

8. We find that despite BellSouth's claimed attempts to deploy uniform OSS throughout its nine-state region, BellSouth's OSS do differ physically from state-to-state in a number of respects. Such physical differences are most prevalent with regard to BellSouth's legacy systems and its manual processes. For example, the evidence in the record demonstrates that BellSouth's legacy systems utilize data that differs by geography.¹⁹ In addition, the evidence in the record demonstrates that BellSouth relies on manual processes performed locally in each state to complete many provisioning and maintenance and repair functions.²⁰ Evidence in the record also demonstrates that the manual processing of orders at BellSouth's various LCSCs is not uniform.²¹
9. We also find that in certain instances BellSouth clearly uses different electronic OSS. For example, BellSouth uses the DOE system for certain orders in former Southern Bell states (Georgia, North Carolina, South Carolina, and Florida) and the SONGS system for similar orders in former South Central Bell states (Tennessee, Kentucky, Alabama,

¹⁸ Tr. 12/4/01 at 45; see also Tr. 12/3/01 at 205.

¹⁹ Bradbury Direct at 9-11.

²⁰ Bradbury Direct at 16-17; Tr. 12.6.01 at 51-52, 85, 87.

²¹ Bradbury Direct at 10-11; Tr. 12/4/01 at 114-16; Tr. 12/5/01 at 85-87, 91-92.

Mississippi, and Louisiana). BellSouth, moreover, provides some states with electronic access to certain databases whereas other states must access such data manually.²²

10. As explained in more detail below under Issue No. 4, we find the evidence in the record establishes that BellSouth's OSS performance can and does vary substantially from one state to another. Furthermore, we find that BellSouth did not present any empirical data or other convincing evidence to demonstrate that BellSouth's state-to-state performance variances are not caused in whole or in part by the physical differences in BellSouth's OSS.

CONCLUSION OF LAW

11. BellSouth claims that its OSS "are designed, developed, modified, and measured for performance on a regionwide basis to operate in an indistinguishable manner whether the CLEC is in Tennessee, Georgia, or any of the other seven states in the region."²³ We conclude that BellSouth has not proven that claim. The evidence in record shows that while BellSouth's OSS may have a number of physical similarities throughout the region, its OSS also have a number of physical differences. The evidence in the record also shows that BellSouth's OSS performance can and does vary substantially from one state to another. BellSouth, however, has not provided any convincing evidence to demonstrate that BellSouth's state-to-state performance variances are not caused in whole or in part by the physical differences in BellSouth's OSS. Absent such evidence, we

²² Tr. 12/4/01 at 142-49.

²³ Tr. 12/4/01 at 45; see also Tr. 12/3/01 at 205.

cannot reasonably conclude that BellSouth's OSS are physically indistinguishable throughout its region.

ISSUE NO. 3

Is it appropriate to use the Georgia third party test results as a surrogate for Tennessee-specific test results?

POSITIONS OF THE PARTIES

Intervenors: BellSouth has failed to present the Authority with any convincing evidence that the results of the Georgia third party test accurately reflect BellSouth's current OSS performance in Tennessee. The Georgia test was neither designed nor intended to be a regional test. The systems and processes tested in Georgia differ materially from those BellSouth uses to support wholesale operations in Tennessee today. In addition, BellSouth engaged in preferential treatment practices during the Georgia test. For these reasons, it would be inappropriate for the Authority to use the Georgia test as a surrogate for Tennessee-specific test results in its evaluation of BellSouth's compliance with state and federal law.

BellSouth: The Authority can rely on the results of the Georgia third-party test as evidence of BellSouth's compliance with state and federal law in Tennessee. The Georgia test is sufficiently thorough and complete.²⁴

FINDINGS OF FACT

12. We find that the Georgia test was not a regional test. Mr. Weeks, the primary person at KCI responsible for overseeing the Georgia test, testified that the Georgia test was "designed to be state specific" and designed for the sole use of the Georgia Commission.²⁵ Mr. Weeks also expressed his concerns that the Georgia test was "being used in another jurisdiction in a way that [KCI] didn't intend for it to be used and in a way that [KCI] explicitly tried to keep from happening."²⁶ Indeed, KCI included a

²⁴ BellSouth's Phase I Post-Hearing Brief at 32.

²⁵ Tr. 12/3/01 at 22, 26-27, 68.

²⁶ Rebuttal Testimony of Sharon E. Norris, filed Nov. 20, 2001, Exhibit SEN3PT-5 at 137-38.

disclaimer in the *Georgia Final Report* indicating the Report's limited use.²⁷ Mr. Weeks further testified that KCI performed no work that would allow it to substantiate BellSouth's attempt to use the Georgia test in Tennessee.²⁸ Accordingly, KCI was unable offer its opinion to the Authority concerning the extent to which the systems, processes, methods, or documentation tested in Georgia would apply to BellSouth's current wholesale operations in Tennessee.²⁹

13. We find that the systems and processes tested in Georgia differ materially from those used to support wholesale operations in Tennessee today. The evidence indicates that certain aspects of the Georgia test involved testing of systems that have since been superseded. For example, the Georgia third-party test did not examine OSS-99,³⁰ RoboTAG,³¹ upgrades to ENCORE,³² or BellSouth's new integrated billing system ("IBS").³³ OSS-99 is particularly significant because more than 80 percent of CLEC transactions involve OSS-99.³⁴

²⁷ Revised Redacted Direct Testimony of Milton McElroy, Jr., filed December 4, 2001, Exhibit MM-3 ("*Georgia Final Report*") at II-1.

²⁸ Tr. 12/3/01 at 28.

²⁹ See Tr. 12/3/01 at 28.

³⁰ Tr. 12/3/01 at 209-10.

³¹ Tr. 12/3/01 at 222-23.

³² Tr. 12/3/01 at 39-40.

³³ Tr. 12/6/01 at 106-08.

³⁴ Tr. 12/3/01 at 209-10; see also Norris Rebuttal at 5-6.

14. We also find that BellSouth engaged in preferential treatment practices during the Georgia third-party test.³⁵ The evidence shows BellSouth altered its business practices during the third-party testing to give preferential treatment to orders from KCI in at least three different respects: (a) BellSouth routed third-party test transactions to a dedicated work group;³⁶ (b) BellSouth gave preferential treatment to orders from Georgia and Florida;³⁷ and (c) BellSouth gave priority handling to certain orders from KCI company codes.³⁸ We find that BellSouth's preferential treatment demonstrates that BellSouth's processes during the Georgia test differ from the processes BellSouth currently uses to handle CLEC orders from Tennessee.
15. We find that areas critical to the development of competition in Tennessee were not tested in Georgia. By design, the Georgia test did not include several key areas of testing included in other states, such as account management, manual ordering processes, and the ability to build interfaces.³⁹ Crucial aspects of volume testing, including volume testing

³⁵ Hearing Exhibit 1, Evaluation of the United States Department of Justice, *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Georgia and Louisiana* ("DOJ Evaluation"), CC Dckt. No. 01-277, released Nov. 6, 2001 at 5 n.14. BellSouth later withdrew its joint-application for Georgia and Louisiana on December 20, 2001.

³⁶ McElroy Revised Redacted Direct at 29.

³⁷ McElroy Revised Redated Direct at 39-40. KCI sent test orders at various times between November 1999 and February 2001, while BellSouth continued to give priority handling to Georgia and Florida orders until April 23, 2001 in at least one of the LCSCs. Tr. 12/3/01 at 234-36.

³⁸ See Tr. 12/3/01 at 274-77.

³⁹ Tr. 12/3/01 at 225-33 (agreeing that the Georgia test did not include tests of the following areas: account management; network design, collocation and interconnection planning; help desk; CLEC training; manual ordering processes; work center support; and the ability to build interfaces").

of manual orders and stress tests, were also not conducted in Georgia.⁴⁰ Although peak volume tests were run in Georgia, they were run in RSIMMS, a test environment with significantly greater capacity than ENCORE, the actual environment BellSouth uses to process orders.⁴¹ Other areas, such as change management and billing, were not evaluated thoroughly in Georgia.⁴²

16. We find that the applicability of the Georgia third party test to Tennessee was outside the scope of the attestation given by Pricewaterhouse Coopers ("PWC"). When asked specifically "whether third-party test results in Georgia would be applicable to the wholesale systems in Tennessee," Mr. Lattimore refused to subscribe to BellSouth's position.⁴³ Rather, he repeatedly stated "[t]hat's an argument that BellSouth is making, and that's not an argument I'm making."⁴⁴ Mr. Lattimore, moreover, testified that PWC would have had to conduct its examination differently to assess the applicability of the Georgia test results to Tennessee. Mr. Lattimore testified that he would have looked at the extent to which the systems tested in Georgia had changed from the time of the test to the time of PWC's examination.⁴⁵ Mr. Lattimore also would have examined performance

⁴⁰ Tr. 12/3/01 at 32-34.

⁴¹ Tr. 12/3/01 at 34-39.

⁴² Norris Rebuttal at 12-15.

⁴³ Tr. 12/5/01 at 7-10.

⁴⁴ Tr. 12/5/01 at 9 (responding to the question: "But your attestation wasn't designed to support that argument?" Mr. Lattimore responded, "Again, that's an argument BellSouth would make, not me").

⁴⁵ Tr. 12/5/01 at 10-14.

data from Georgia and Tennessee and attempted to explain any state-to-state variations.⁴⁶

The examination conducted by PWC in April 2001, however, was not designed to include these areas.

17. We also find that PWC did not attest to the regionality of BellSouth's systems during the period of time when the Georgia third-party test was conducted. Mr. Lattimore testified that PWC's attestation is essentially a snapshot in time "as of May 3, 2001" and does not express an opinion for dates prior to May 3rd.⁴⁷ The testing of BellSouth's pre-ordering and ordering OSS in Georgia, however, took place from November 1999 through February 2001.⁴⁸ Indeed, PWC concedes that it would not have made the same attestation prior to April 23, 2001 because of BellSouth's practices of providing preferential treatment to certain orders.⁴⁹ Specifically, Mr. Lattimore testified that an attestation on April 22 "would have required some kind of reference or exception to the treatment or a reference and a description of that exception or a change in [BellSouth's] assertions."⁵⁰ According to Mr. Lattimore, an attestation with such an exception would "not have satisfied [BellSouth's] intention" and BellSouth "would not have liked it."⁵¹

⁴⁶ Tr. 12/5/01 at 14-15.

⁴⁷ Tr. 12/5/01 at 17; Tr. 12/5/01 at 147; *see also* Tr. 12/3/01 at 234.

⁴⁸ Tr. 12/3/01 at 234-35. Indeed, PWC did not begin its examination until the week of April 2, 2001. Tr. 12/5/01 at 167.

⁴⁹ Tr. 12/3/01 at 235-36.

⁵⁰ Tr. 12/5/01 at 20.

⁵¹ *Id.*

CONCLUSIONS OF LAW

18. The Authority concludes that it is not appropriate to use the Georgia third party test results as a surrogate for Tennessee-specific test results. We agree with the testimony of Mr. Weeks that if KCI "measured a process that's no longer in place, . . . the results of [KCI's] test for that aspect of the test aren't relevant."⁵² BellSouth, however, has not proven its claim that the OSS tested in Georgia are materially the same as its current OSS in Tennessee. Indeed, neither KCI nor PWC were willing to testify in support of BellSouth's argument. As noted above, moreover, the evidence in the record indicates that important aspects of BellSouth's OSS have either changed since the Georgia test or were not tested. In addition, the Authority is concerned about the adverse impact that BellSouth's acknowledged preferential treatment has on the relevancy of the Georgia third party test. Accordingly, we conclude that it is not appropriate to deem the Georgia third party test as relevant to the Authority's evaluation of whether BellSouth's OSS complies with state and federal law in Tennessee.

ISSUE NO. 4

Is it appropriate to use performance data that are based on out-of-state commercial usage as a surrogate for performance data that are based solely on commercial usage in Tennessee?

POSITIONS OF THE PARTIES

Intervenors: The evidence shows, and BellSouth admits, that differences in OSS performance can and do exist across the BellSouth region, and these performance differences can be substantial. BellSouth admitted that explaining performance variances should be part and parcel of its regionality case. BellSouth, however, failed to quantify the extent of these performance differences or provide a convincing causation analysis. Consequently, the Authority has no

⁵² Tr. 12/3/01 at 63.

reasonable basis to conclude that out-of-state performance data would be reflective of BellSouth's actual OSS performance in Tennessee.

BellSouth: BellSouth's "OSS are designed, developed, modified, and measured for performance on a regionwide basis to operate in an indistinguishable manner whether the CLEC is in Tennessee, Georgia, or any of the other seven states in the region."⁵³ Variations in performance from state-to-state are caused by factors outside BellSouth's control. The Authority can rely on performance data from the other states in BellSouth's region, including Georgia, in its evaluation of BellSouth's compliance with state and federal law in Tennessee.

FINDINGS OF FACT

19. The Authority finds that BellSouth's OSS performance can and does vary substantially from state-to-state. BellSouth itself concedes that "differences in performance can and do exist" across the BellSouth region and these performance differences can be substantial.⁵⁴
20. The Authority finds that BellSouth did not submit any convincing evidence in its affirmative case to quantify the extent to which its OSS performance actually varies from one state to another. In particular, BellSouth did not submit into the record any comparative analysis of state-specific performance data.
21. The Authority finds that the comparative state-specific flow through data that it ordered BellSouth to produce is compelling evidence that BellSouth's OSS performance varies substantially from one state to another even where BellSouth has attempted to "regionalize" its OSS. An important performance measure of BellSouth's ordering OSS is achieved flow through rates, which indicates the percentage of error-free electronic orders that BellSouth's OSS actually process without human intervention.

⁵³ Tr. 12/4/01 at 45.

⁵⁴ Heartley Direct at 4; Tr. 12/6/01 at 59.

22. We find that the matrix below, which is based the comparative state-specific flow through data we ordered BellSouth to produce, quantifies the range of variance in BellSouth's reported achieved flow through rates from March to December 2001. Specifically, the identified percentages equal the difference between the highest and lowest achieved flow through rate experienced by a state in BellSouth's region for the particular month and product category (residential resale, business resale, UNEs, aggregate of non-LNP products, and LNP).⁵⁵ These ranges demonstrate that BellSouth's achieved flow through rates vary substantially from one state to another in its region.

**Achieved Flow Through Rates
Range of Variance
(High State Rate minus Low State Rate)**

Month (2001)	Residential Resale	Business Resale	UNE	Aggregate Non-LNP	LNP
March	12.43%	16.36%	16.37%	12.12%	68.00%
April	11.05%	33.03%	20.72%	11.61%	74.00%
May	10.11%	11.80%	15.38%	10.49%	69.00%
June	14.00%	16.53%	22.23%	14.50%	78.00%
July	16.66%	27.80%	16.26%	14.03%	69.00%
August	12.93%	14.43%	30.33%	19.43%	83.00%
September	8.40%	23.25%	16.63%	13.31%	82.00%
October	9.96%	12.96%	17.63%	12.05%	80.00%
November	11.30%	24.77%	28.00%	10.48%	80.00%
December	11.56%	20.71%	30.46%	8.88%	75.00%
Avg. Range	11.84%	20.16%	21.40%	12.69%	75.80%

⁵⁵ For example, in the "Report: Percent Flow Through Service Requests (State Summary - UNE) Report Period: December 2001," the state with the highest rate of "Percent Achieved Flowthrough" was Georgia, with 76.76%. The state with the lowest rate was Mississippi, with 46.30%. Thus, the range of variance between all states for UNE "Percent Achieved Flowthrough" in December 2001 equaled 30.46% (i.e., 76.76% minus 46.30%).

23. We find unconvincing BellSouth's claim that the variances in state-specific flow through rates are caused solely by differences in product mix. According to BellSouth, CLECs operating in one state may order a different product mix within the reported product categories, that each product has a different achieved flow through rate, and that the state-to-state performance differences are caused by differences in product mixes between the states. BellSouth, however, has provided no empirical data to support its claim. On the other hand, the empirical data in Hearing Exhibit No. 8 undercuts BellSouth's claim. Hearing Exhibit No. 8, which was based on data supplied by BellSouth, compares the percentage of mechanized firm order confirmations (FOCs) for five specific UNE products across three states. Because Hearing Exhibit No. 8 is based on specific UNE products and not the overall UNE product category, any potential "product mix" variable would not apply. We find this comparative analysis, as set forth below, to be a reasonable surrogate for state-specific achieved flow through rates for specific product types because both measure the rate at which error-free electronic LSRs flow through BellSouth's ordering OSS without manual intervention.⁵⁶ We also find that this comparative analysis demonstrates that BellSouth's OSS performance varies substantially between states even for identical UNE products.

AUGUST 2001 -- MONTHLY STATE SUMMARY

UNE Product	FOC	Tennessee	CLEC VOLUME	
			Georgia	Florida
Port/Loop Combo.	Mechanized	3,051	42,488	8,204

⁵⁶ Tr. 12/3/01 at 120-21.

	Part. Mechanized	1,801	11,440	4,240
	Total Mechanized	4,852	53,928	12,444
	Mech./Tot. Mech	62.88%	78.79%	65.93%
2W An. Loop Design	Mechanized	73	86	1,026
	Part. Mechanized	380	215	472
	Total Mechanized	453	301	1,498
	Mech./Tot. Mech	16.11%	28.57%	68.49%
2W An. Loop Design w/ LNP	Mechanized	4	27	53
	Part. Mechanized	119	227	695
	Total Mechanized	123	254	748
	Mech./Tot. Mech	3.25%	10.63%	7.09%
LNP Standalone	Mechanized	70	764	778
	Part. Mechanized	142	692	888
	Total Mechanized	212	1,456	1,666
	Mech./Tot. Mech	33.02%	52.47%	46.70%

24. We find that BellSouth has not provided any causation analysis of the state-to-state variances in BellSouth's OSS performance that the Authority could reasonably use to account and adjust (as appropriate) for state-specific factors. During the hearing, BellSouth speculated generally that differences in performance are caused by factors outside its control.⁵⁷ BellSouth, however, also conceded that that differences in performance can also be caused by factors within BellSouth's control and BellSouth has at least some ability to mitigate and manage state-to-state differences that it claims are outside of its control.⁵⁸

⁵⁷ Tr. 12/6/01 at 62.

⁵⁸ See 12/6/01 at 62-64.

25. We find that PWC did not attest to the appropriateness of using performance data from another state as a surrogate for performance data in Tennessee. Mr. Lattimore testified that it would not be appropriate to use the PWC attestation in support of the argument that performance data in another state (such as Georgia) can be used as a surrogate for performance data in Tennessee.⁵⁹ Mr. Lattimore conceded that PWC did not examine whether BellSouth's systems produce the same results from state-to-state because that was outside the scope of the examination.⁶⁰ Mr. Lattimore, moreover, testified that if PWC had been asked to examine whether performance data from other states in BellSouth's region is representative of BellSouth's wholesale operations in Tennessee, PWC "would have had to structure the engagement differently, would probably have drafted a different assertion about performance data for [it] to design a whole different set of tests against."⁶¹
26. We also find that PWC's attestation was not probative as to the Phase I issues in this docket. The scope of PWC's attestation was too narrow to be useful in the Authority's investigation. Three of the five major OSS functions -- provisioning, maintenance/repair, and billing -- were completely outside the scope of the attestation.⁶² The legacy systems that BellSouth utilizes to complete basic pre-ordering and ordering transactions (such as accessing telephone numbers, due dates, addresses, product and service information, and

⁵⁹ Tr. 12/5/01 at 34-35.

⁶⁰ Tr. 12/5/01 at 35-36.

⁶¹ Tr. 12/5/01 at 22-23.

⁶² Tr. 12/5/01 at 44.

customer service records) were also outside the scope of the attestation.⁶³ For those pre-ordering and ordering OSS that were within the scope of the attestation, PWC only examined the functionality of those OSS and not how well those OSS performed from state-to-state. In total, the PWC examined only a small fraction of BellSouth's OSS in isolation.

27. We find that PWC's execution of the attestation diminishes whatever limited probative value it may have. PWC evaluated the "sameness" of BellSouth's OSS software by merely looking at whether the software code was the same size and version.⁶⁴ PWC did not look within the code to assess whether there were any state-to-state differences in functionality, even though it had evidence that such differences existed.⁶⁵ PWC also failed to fully examine the performance of BellSouth's LCSCs. For instance, PWC noted differences in error rates, performance standards, and training between BellSouth's Atlanta and Birmingham LCSCs.⁶⁶ Nevertheless, PWC asserts that there are no significant aspects of the processes, personnel, and work center facilities at BellSouth's LCSCs that would provide one state a greater level of service than the other states in BellSouth's region.⁶⁷ Finally, PWC also attested that there were no material differences

⁶³ See Tr. 12/5/01 at 46-47, 50.

⁶⁴ Tr. 12/5/01 at 56.

⁶⁵ Tr. 12/5/01 at 56.

⁶⁶ Tr. 12/5/01 at 86, 87, 91-92.

⁶⁷ Tr. 12/5/01 at 76; *see also* McElroy Revised Redacted Direct, Exhibit MM-14 at 3.

between DOE and SONGS, despite having found a significant disparity in the average input time between the two systems.⁶⁸

28. We find that PWC has not demonstrated that its opinion warrants any material weight in the Authority's deliberations. PWC stated an opinion but did not explain the facts and reasoning it relied on to form that opinion.⁶⁹ Since this information is largely not in the record, the Authority is hindered from making its own independent assessment of the soundness and independence of PWC's judgment on particular issues. Mr. Lattimore, moreover, displayed questionable judgment in his designation of "confidential" documents in this docket.⁷⁰
29. We also find that PWC did not demonstrate that its attestation was truly independent. BellSouth is Mr. Lattimore's biggest client, and Mr. Lattimore has spent approximately 60 percent of his time over the past several years working on BellSouth matters.⁷¹ Mr. Lattimore, moreover, testified that the goal of the attestation was to determine that BellSouth's OSS were regional.⁷² Indeed, Mr. Lattimore admitted that he probably would have conducted the engagement differently if the goal of the attestation had been to

⁶⁸ McElroy Revised Redacted Direct, Exhibit MM-14 at 3, Tr. 12/5/01 at 163. DOE and SONGS are two of the order entry systems used by personnel at the LCSCs to input manual or partially-mechanized orders into SOCS for downstream processing. DOE is used in former Southern Bell states (GA, FL, NC and SC), while SONGS is used in former South Central Bell states (LA, MS, TN, AL, and KY).

⁶⁹ Tr. 12/5/01 at 104-04.

⁷⁰ Tr. 12/4/01 at 256-65.

⁷¹ Tr. 12/5/01 at 36-37.

⁷² Tr. 12/5/01 at 38.

determine that BellSouth's OSS were not regional.⁷³ The Authority cannot reasonably find that PWC attestation was truly independent given PWC's business relationship with BellSouth and its apparent predisposition to a particular outcome.

CONCLUSIONS OF LAW

30. We conclude that the unconverted evidence in the record demonstrates BellSouth's OSS performance can and does vary from one state to another. We find that the state-specific flow through data to be particularly compelling evidence of the substantial variances in performance that can occur despite BellSouth's efforts to "regionalize" its OSS. As it must, BellSouth concedes that its OSS performance varies throughout its region.
31. We also conclude that identifying, quantifying, and explaining any state-to-state performance variances are part and parcel to proving the relevancy of out-of-state performance data to Tennessee. Mr. Pate conceded at the hearing that explaining such performance variances should be part and parcel of BellSouth's regionality case.⁷⁴ BellSouth, however, did not provide any analysis that identified, quantified, or explained its OSS performance variances.⁷⁵ Indeed, the Authority had to direct BellSouth on several occasions to produce the state-specific flow through data that indicated wide performance variances in BellSouth's ordering OSS.
32. We conclude that BellSouth has not demonstrated that performance data from another state would accurately reflect BellSouth actual OSS performance in Tennessee.

⁷³ Tr. 12/5/01 at 38.

⁷⁴ Tr. 12/4/01 at 71.

⁷⁵ Tr. 12/4/01 at 71 ("I think we should be able to explain the variances. But it's not part of my testimony"); Tr. 12/6/01 at 96-97; Tr. 12/4/01 at 109-11 (regarding Mr. Varner's stricken testimony).

Accordingly, based on the record before us, we hold that it would be inappropriate for the Authority to use performance data based on commercial usage in another state as a surrogate for Tennessee-specific data in our evaluation of BellSouth's compliance with state and federal law.

SUMMARY OF ISSUES AND HOLDINGS

Issue No. 1. What test should the Authority apply to determine whether out-of-state performance data can be an appropriate surrogate for Tennessee-specific data? The Authority holds that it must evaluate the extent to which BellSouth's OSS (a) are physically indistinguishable regionwide; and (b) perform substantially the same from state-to-state. If BellSouth cannot establish that its OSS are substantially the same from both a physical and performance perspective, then the Authority cannot reasonably use out-of-state performance data (based on either third party testing or commercial usage) as a surrogate for Tennessee-specific data.

Issue No. 2: Are BellSouth's OSS physically indistinguishable region-wide? The Authority holds that BellSouth has not demonstrated that its OSS are physically indistinguishable throughout its region. More importantly, BellSouth has not demonstrated that these physical differences do not affect OSS performance.

Issue No. 3: Is it appropriate to use the Georgia third party test results as a surrogate for Tennessee-specific test results? The Authority concludes that BellSouth has not demonstrated that results of the Georgia third party tests reasonably reflect BellSouth's current OSS performance in Tennessee. Accordingly, the Authority holds that that it would be inappropriate

to use the Georgia third party test results as a surrogate for Tennessee-specific test results in evaluating BellSouth's compliance with state and federal law. The issue of what Tennessee-specific testing must be conducted, if any, will be decided in Phase II of this docket.

Issue No. 4: Is it appropriate to use performance data that are based on out-of-state commercial usage as a surrogate for performance data that are based solely on commercial usage in Tennessee? The Authority concludes that BellSouth has not demonstrated that its OSS performance is substantially the same from state-to-state. Accordingly, the Authority holds that, for the purposes of evaluating BellSouth's compliance with state and federal law, it would be inappropriate for the Authority to use performance data that are based on out-of-state commercial usage as a surrogate for performance data that are based solely on commercial usage in Tennessee.

INTERVENOR'S CONCLUSION

We respectfully request that the Authority adopt our proposed findings of fact and conclusions of law. The objective of Phase I in this docket is to determine the appropriateness of using out-of-state performance data (be it test results or data based on commercial usage) as a surrogate for Tennessee-specific data. Given that objective, the focus of the Authority's inquiry must be the extent to which BellSouth's OSS performance varies from one state to another. Performance data from another state cannot be an appropriate surrogate for Tennessee-specific data if BellSouth's OSS performance varies substantially throughout its region.

The evidence in the record here demonstrates that BellSouth's OSS performance can and does vary substantially from state-to-state. Despite these performance variances, BellSouth did

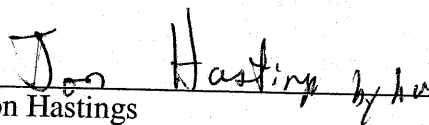
not even attempt to provide the Authority with a complete and thorough analysis of the extent and causes of its OSS performance variances. Instead, BellSouth attempted to gloss over its actual performance variances by arguing that its OSS were designed to operate in an indistinguishable manner. Even if it were true that BellSouth designed its OSS to operate in an indistinguishable manner, the evidence in the record shows that BellSouth's OSS are actually operating at different performance levels throughout its region. Thus, BellSouth's OSS performance in one state is not necessarily reflective of BellSouth's actual OSS performance in Tennessee.

With respect to the Georgia third party test, the evidence in the record does not demonstrate that the OSS tested in Georgia are substantially the same OSS used to support wholesale operations in Tennessee. Neither KCI nor PWC conducted such a comparison. Accordingly, neither KCI nor PWC were willing to testify that it would be appropriate for the Authority to rely on the Georgia test. The evidence in the record, moreover, demonstrates that in large part (if not entirely) BellSouth's current wholesale OSS in Tennessee are different than the OSS tested in Georgia because: (a) BellSouth's OSS have changed over time; (b) BellSouth's preferential treatment rendered parts of the Georgia test irrelevant; (c) the Georgia test did not include critical aspects of BellSouth's OSS; (d) BellSouth's OSS in Georgia and Tennessee were different to begin with. Accordingly, the Authority should not use the Georgia test as a surrogate for Tennessee-specific testing.

For these reasons and the reasons stated above and in our brief, we respectfully request that the Authority adopt our proposed findings of fact and conclusions of law.

Respectfully submitted,

By:



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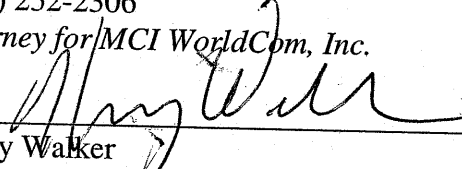
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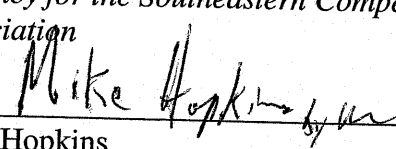
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I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the following on this the 15th day of March, 2002.

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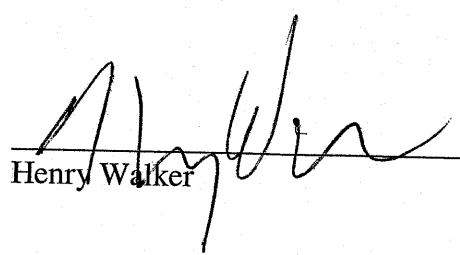
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